

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION

JESSE GOINS

PETITIONER

v.

Case No. 5:12CV00452 JMM-JTK

RAY HOBBS, Director,
Arkansas Department of Correction

RESPONDENT

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION
INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge James M. Moody. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the United States District Judge, you must, at the same time that you file your written objections, include a "Statement of Necessity" that sets forth the following:

1. Why the record made before the Magistrate Judge is inadequate.

2. Why the evidence to be proffered at the requested hearing before the United States District Judge was not offered at the hearing before the Magistrate Judge.
3. An offer of proof setting forth the details of any testimony or other evidence (including copies of any documents) desired to be introduced at the requested hearing before the United States District Judge.

From this submission, the United States District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A 149
Little Rock, AR 72201-3325

I. Introduction

Petitioner, Jesse Goins, is a prisoner currently confined to the Tucker Maximum Security Unit of the Arkansas Department of Correction. On December 7, 2012, he initiated this § 2254 habeas action. (Docket entry #1). He neither filed an application to proceed in forma pauperis nor paid the required filing fee.

On March 17, 1994, the Grant County Circuit Court sentenced Petitioner as a habitual offender to life imprisonment after a jury found him guilty of aggravated robbery. Petitioner subsequently filed a habeas action in the Eastern District of Arkansas, attacking his conviction. The district court dismissed the petition in 1998. Thereafter, the Eighth Circuit denied the certificate of appealability and likewise denied the petition for authorization to file a successive habeas.

For the reasons set forth herein, the Court recommends that the current habeas petition be dismissed.

II. Discussion

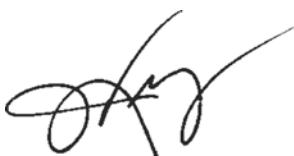
A claim presented in a second or successive habeas petition under § 2254 must be dismissed unless the Petitioner can make a *prima facie* showing that he meets all of the requirements of 28 U.S.C. § 2244(b)(2). Importantly, this determination must be made by the Eighth Circuit Court of Appeals, not the United States District Court. *See* 28 U.S.C. § 2244(b)(3)(A) (“Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application”). Thus, in order for Petitioner to file and pursue this successive habeas action, he must obtain authorization from the Eighth Circuit, pursuant to 28 U.S.C. § 2244(b)(3)(A).

The instant petition is clearly a successive petition. Petitioner does not assert that he has sought or received permission from the United States Court of Appeals for the Eighth Circuit to file this petition. He may not file a successive petition in this Court without permission of the Eighth Circuit. Thus, all pending motions should be denied and the petition dismissed.

III. Conclusion

Based on the foregoing, it is recommended that the instant petition be denied and dismissed. Further, pursuant to 28 U.S.C. § 1915(a), the undersigned recommends the finding that an appeal from dismissal would not be taken in good faith.

SO ORDERED this 3rd day of January, 2013.



UNITED STATES MAGISTRATE JUDGE